

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW PERRONG,

Plaintiff,

v.

FRONTIER UTILITIES NORTHEAST LLC
and NEXT GENERATION ENERGY, INC.,

Defendants.

Civil Action No. 20-05844-MSG

**[PROPOSED] ORDER GRANTING DEFENDANT FRONTIER UTILITIES
NORTHEAST LLC'S MOTION FOR LEAVE TO FILE SUR-REPLY**

AND NOW, this ____ day of _____, 2021, upon consideration of Defendant Frontier Utilities Northeast LLC's Motion for Leave to File a Sur-Reply in opposition to Plaintiff's Motion for Preliminary Approval of Class Action Settlement, it is hereby **ORDERED** that the Motion for Leave to File a Sur-Reply is **GRANTED**.

The Honorable Mitchell S. Goldberg
United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW PERRONG,

Plaintiff,

v.

FRONTIER UTILITIES NORTHEAST LLC
and NEXT GENERATION ENERGY, INC.,

Defendants.

Civil Action No. 20-05844-MSG

**DEFENDANT FRONTIER UTILITIES NORTHEAST LLC'S
MOTION FOR LEAVE TO FILE SUR-REPLY**

Michele R. Blythe (*pro hac vice*)
NEXTERA ENERGY RESOURCES, LLC
700 Universe Blvd.
Juno Beach, FL 33408
Phone: (561) 691-7207
Fax: (561) 691-7103
Michele.Blythe@nexteraenergy.com

Michael P. Daly (Pa. Bar No. 86103)
FAEGRE DRINKER BIDDLE & REATH LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103-6996
Phone: 215.988.2700
Fax: 215.988.2757
michael.daly@faegredrinker.com

Marsha J. Indych
(motion for *pro hac vice* admission forthcoming)
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036-2714
Phone: 212.248.3140
Fax: 212.248.3141
marsha.indych@faegredrinker.com

*Counsel for Defendant
Frontier Utilities Northeast LLC*

Pursuant to this Court's Policies and Procedures for Civil Matters ¶ 10, Defendant Frontier Utilities Northeast LLC ("Frontier") respectfully moves this Court to issue an order permitting Frontier file a Sur-Reply in Opposition to Plaintiff's Motion for Preliminary Approval, in the form attached hereto as Exhibit 1, in order to respond to new legal arguments and factual assertions raised in Plaintiff's Reply In Support of Motion for Preliminary Approval of a Class Action Settlement [ECF No. 23] ("Reply"). In support thereof, Frontier states as follows:

On April 2, 2021, Plaintiffs filed their Motion for Preliminary Approval of a Class Action Settlement [ECF No. 15] despite knowing full well that Frontier stated that they should "cease and desist from any effort to seek court approval of the Settlement Agreement." ECF No. 18-5 (Opp. to Mot. for Preliminary Approval, Ex. E, Notice of Breach dated Mar. 29, 2021 at 4); *see also* ECF No. 16-2 (Mot. to Strike, Ex. B, Email from M. Blythe) ("[I]t is Frontier's position that the Class Action Settlement Agreement and Release cannot be presented to the Court for approval."). Notwithstanding this, Plaintiffs and Joint Counsel filed a Motion for Preliminary Approval that failed to address (other than an oblique reference in one footnote) Frontier's position that the purported settlement agreement for which Plaintiffs sought approval was unenforceable. ECF No. 15 at 2 n.2.

Now, Plaintiffs and Joint Counsel have filed a 10-page Reply and two declarations from lead counsel and Mr. Frey addressing the arguments that they already knew Frontier would make in opposition to the motion for preliminary approval. ECF No. 23. Among other things, the Reply argues that: (i) Plaintiffs and Joint Counsel made no fraudulent misrepresentations or omissions with respect to Mr. Frey's arrest and indictment on child pornography charges to induce the purported settlement; (ii) Plaintiffs and Joint Counsel had no duty to disclose a fact that was clearly

material to Frontier's willingness to settle to Frontier; and (iii) Joint Counsel's duty of candor would not arise unless and until Frontier asked if Mr. Frey was a child pornographer.

Those and other new factual assertions and legal arguments made by Plaintiffs for the first time in their Reply were not previously addressed in Frontier's Opposition to Motion for Preliminary Approval. Pursuant to Paragraph 10 of this Court's Policies and Procedures for Civil Matters, leave to file a sur-reply "will only be permitted when necessary to rebut an issue or factual assertion not covered by the party's original submission." Frontier should be given an opportunity to respond to these new legal arguments and factual assertions raised in the Reply.

For the foregoing reasons, Frontier respectfully seeks leave to file a Sur-Reply in Opposition to Plaintiff's Motion for Preliminary Approval in order to address the new legal issues and factual assertions in the Reply, as well as any other relief that this Court deems just and proper.

Dated: May 18, 2021

Respectfully submitted,

/s/ Michael P. Daly

Michael P. Daly (Pa. Bar No. 86103)
FAEGRE DRINKER BIDDLE & REATH LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103-6996
Phone: 215.988.2700
Fax: 215.988.2757
michael.daly@faegredrinker.com

Marsha J. Indych
(Motion for *pro hac vice* admission forthcoming)
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036-2714
Phone: 212.248.3140
Fax: 212.248.3141
marsha.indych@faegredrinker.com

Michele R. Blythe (*pro hac vice*)
NEXTERA ENERGY RESOURCES, LLC
700 Universe Blvd.
Juno Beach, FL 33408
Phone: (561) 691-7207
Fax: (561) 691-7103
Michele.Blythe@nexteraenergy.com
Counsel for Defendant
Frontier Utilities Northeast LLC

CERTIFICATE OF SERVICE

I certify that, on the date set forth below, I served the foregoing document on all counsel of record who have entered an appearance via the Court's CM/ECF system.

Dated: May 18, 2021

By: /s/ Michael P. Daly
Michael P. Daly